

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 02-84189
ADV No. 04-4106

Bruce Allan Rahn and Lonna Jean Rahn

Chapter 7

Debtors.

Terri A. Georgen, Trustee,

Plaintiff,

vs.

AMENDED COMPLAINT

David Rahn,

Defendant.

Terri A. Georgen, Trustee (“Trustee”) of the Bankruptcy Estate of Bruce Allan Rahn and Lonna Jean Rahn , (“Debtors”) as and for her Complaint against David Rahn, states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtors.
2. This bankruptcy case was commenced by the filing of a voluntary bankruptcy petition on November 19, 2002.
3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
4. This court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S. C. §§544, 547, 548 and 550.

Exhibit A

5. In January, 2002, the Debtors owned an undivided ½ interest in real property in St. Louis County, Minnesota, legally described as follows:

North Half of Northeast Quarter (N ½ of NE 1/4) Section Twenty-two (22), Township Fifty-three (53) North of Range Seventeen (17) West of the Fourth Principal Meridian according to the U.S. Government Survey thereof;

(“Property”)

1. That, upon information and belief, in January 2002 the Defendant owned an undivided ½ interest in the Property.
2. That on or about February 12, 2002, the Debtors signed a warranty deed (“Deed”) transferring their interest in the Property to David Rahn (“Transfer One”).
3. David Rahn is a relative of the Debtors and so is an insider pursuant to 11 U.S.C. § 101(31).
4. That, on or about March 11, 2002, the Deed was recorded in the St. Louis County Recorder’s office as Document No. 00843325 (“Transfer Two”).
5. That Transfer One and Transfer Two both occurred within one year of filing.
6. At all relevant times there existed at least one creditor of the Debtors.

COUNT ONE - AVOIDANCE DUE TO PREFERENTIAL TRANSFER

7. Plaintiff herein realleges and reasserts the allegations contained in paragraphs 1 through 11 of this Complaint.
8. That Transfers One and Two were purportedly made on account of antecedent debt owed to David Rahn by 7 West, Inc., a corporation.
9. That Defendant would receive more if Transfer One and Transfer Two were not avoided than it would receive as a creditor if this were a chapter 7 case, Transfer One and

Transfer Two had not occurred, and Defendant received payment of the purported debt owed to Defendant by 7 West, Inc. to the extent provided by the provisions of title 11 of the U.S. Code.

10. That Transfers One and Two are avoidable by the Trustee pursuant to 11. U.S.C. § 547 and recoverable pursuant to 11 U.S.C. § 550.

COUNT TWO - AVOIDANCE DUE TO FRAUDULENT TRANSFER

11. Plaintiff herein realleges and reasserts the allegations contained in paragraphs 1 through 15 of this Complaint.

12. That, upon information and belief, neither Bruce Rahn nor Lonna Jean Rahn personally owed money to David Rahn.

13. That Transfers One and Two are avoidable by the Trustee pursuant to 11 U.S.C. § 548, and recoverable pursuant to 11 U.S.C. § 550.

COUNT THREE - AVOIDANCE

14. Plaintiff herein realleges and reasserts the allegations contained in paragraphs 1 through 18 of this Complaint.

15. That Transfers One and Two are avoidable and recoverable pursuant to 11 U.S.C. § 544 and Minn. Stat. §§ 513.44 and 513.45 and recoverable pursuant to 11 U.S.C. § 550 and Minn. Stat. § 513.47.

COUNT FOUR - SALE

16. Plaintiff herein realleges and reasserts the allegations contained in paragraphs 1 through 20.

17. That, following avoidance of Transfers One and Two as alleged above, the Trustee will be the owner of an undivided ½ interest in the Property, with the Defendant also owning an undivided ½ interest in the Property.

18. That, pursuant to 11 U.S.C. § 550, the Trustee may recover the Property or the value thereof after avoidance.

19. That, upon information and belief, prior to the commencement of this bankruptcy case, the Debtors made contributions towards the landscaping of the Property and purchased parts and materials which have been commingled, assimilated and otherwise incorporated or used in the construction of a structure or structures on the Property.

20. That, upon information and belief, the geography, layout and terrain of the Property makes partition among the estate and the Defendant impracticable, and partition would cause great prejudice to the owners.

21. That the benefit to the estate of a sale of the Property free of the interests of the Defendant outweighs any detriment to the Defendant.

22. That, upon information and belief, the Property is not used in the production, transmission or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.

23. That, pursuant to 11 U.S.C. § 363, the Trustee may sell both the estate's interest and the interest of the Defendant, as a co-owner of the Property.

24. That pursuant to Minn. Stat. § 558.13 the Court is authorized to order a sale of the entire Property.

COUNT FIVE - PARTITION

25. Plaintiff herein realleges and reasserts the allegations contained in paragraphs 1 through 29.

26. The Trustee does not believe that partition is practicable, but, in the alternative, if the court finds that partition of the Property is practicable, the Trustee, as recovery, pursuant to 11 U.S.C. § 550, of Transfers One and Two, seeks an order of the court directing partition of the Property in such a way as to create two parcels of equal value taking into account the Debtors' contributions towards the landscaping of the Property and the Debtors' purchase of parts and materials which have been commingled, assimilated and otherwise incorporated or used in the construction of a structure or structures on the property and the increase in value attributable thereto.

WHEREFORE, the Plaintiff respectfully requests that this Court makes its Order:

1. Avoiding Transfer One and Transfer Two to the Defendant of the Debtors' undivided ½ interest in the Property located in Saint Louis County, State of Minnesota and described as:

**North Half of Northeast Quarter (N ½ of NE 1/4) Section
Twenty-two (22), Township Fifty-three (53) North of Range
Seventeen (17) West of the Fourth Principal Meridian
according to the U.S. Government Survey thereof;**

("Property")

pursuant to 11 U.S.C. §547 and ordering recovery of those transfers from the Defendant, pursuant to 11 U.S.C. §550 pursuant to Count 1 of this Amended Complaint; or

2. Avoiding Transfer One and Transfer Two to the Defendant of the Debtors' undivided ½ interest in the Property pursuant to 11 U.S.C. §548 and ordering

recovery pursuant to 11 U.S.C. §550 pursuant to Count 2 of this Amended Complaint; or

3. Avoiding Transfer One and Transfer Two to the Defendant of the Debtors' undivided ½ interest in the Property pursuant to 11 U.S.C. §544, Minn Stat. §§513.44 and 513.45 and ordering recovery pursuant to 11 U.S.C. §550 and Minn. Stat. §513.47 pursuant to Count 3 of this Amended Complaint; and
4. Declaring that partition of the Property is impracticable, that partition would cause great prejudice to the parties, and that all elements have been met entitling Trustee to sell both the estate's interest and the interest of the Defendant in the Property with net proceeds to be evenly distributed between the estate and the Defendant, pursuant to 11 U.S.C. §363 or Minn. Stat. § 558.14, pursuant to Count 4 of this Amended Complaint; or
5. If the Court determines that partition of the Property is practicable, ordering partition of the Property in such a way as to create two parcels of equal value taking into account the Debtors' contributions towards the landscaping of the Property and the Debtors' purchase of parts and materials which have been commingled, assimilated and otherwise incorporated or used in the construction of a structure or structures on the property and the increase in value attributable thereto pursuant to Count 5 of this Amended Complaint.
6. Awarding the Plaintiff her costs and disbursements in this action and any other or further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: October 4, 2004

By: /e/ Randall L. Seaver

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12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

Attorneys for Plaintiff

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 02-84189
ADV No. 04-4106

Bruce Allan Rahn and Lonna Jean Rahn,

Debtors.

Terri A. Georgen, Trustee,

Plaintiff,

vs.

UNSWORN CERTIFICATE OF SERVICE

David Rahn,

Defendant.

I, Kari L. Fogarty, declare under penalty of perjury that on October 4, 2004 I mailed a copy of the Amended Complaint by first class mail, postage prepaid to each entity named below at the address stated below for each entity:

William P. Kain
Schmidt & Lund
13 South 7th Avenue
St. Cloud, MN 56303

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

FULLER, SEAVER & RAMETTE, P.A.

Dated: October 4, 2004

By: /e/ Kari L. Fogarty
Kari L. Fogarty
Legal Secretary
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888